

House Bill 1511 (AS PASSED HOUSE AND SENATE)

By: Representatives Hembree of the 67th, Brooks of the 63rd, Bruce of the 64th, and Bearden of the 68th

A BILL TO BE ENTITLED
AN ACT

To amend an Act entitled "An Act to create the Douglasville-Douglas County Water and Sewer Authority," approved March 7, 1985 (Ga. L. 1985, p. 3584), as amended, so as to amend the board of directors; to define certain terms; to provide certain powers of such authority; to provide for an immunity from tort action; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

An Act entitled "An Act to create the Douglasville-Douglas County Water and Sewer Authority," approved March 7, 1985 (Ga. L. 1985, p. 3584), as amended, is amended by revising Section 3 as follows:

"SECTION 3.

Douglasville-Douglas County Water and Sewer Authority.

(a) There is hereby created a public body corporation to be known as the Douglasville-Douglas County Water and Sewer Authority and by such name, style, and title, said body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of law and equity, except that the authority or the trustee acting under any trust indenture shall in no event be liable for any torts committed by any of its officers, agents or employees.

(b) The authority board of directors shall be composed of seven members, five to be appointed by mutual agreement and decision of the mayor of the City of Douglasville and the chairperson of the Douglas County Board of Commissioners. The mayor of the City of Douglasville and the chairperson of the Douglas County Board of Commissioners shall serve as ex officio members with full voting rights as members of the authority. The five appointed members of the authority shall be selected by the following method: the mayor

of the City of Douglasville and the chairperson of the Douglas County Board of Commissioners shall each select ten prospective members, two each from each of the five general school districts in Douglas County as constituted on March 7, 1985. By mutual agreement and process of elimination, the mayor and the chairperson shall arrive at a total of five members, one from each of the five school districts, to serve staggered terms as follows: one member for one year, one member for two years, one member for three years, one member for four years, and one member for five years. After completion of the initial terms specified in this section, each term shall be for a period of five years. The mayor and chairperson shall be voting members of the board of directors by virtue of their elected positions without regard to length. Members appointed prior to the effective date of this subsection shall be considered as appointed in accordance with this section. At the end of the term of office of any member so appointed or in the event of death, removal, or resignation of any member prior to the conclusion of his or her term in office, the successor member shall be appointed on a rotating basis by either the mayor and council for the City of Douglasville or the Douglas County Board of Commissioners. Prior to the normal expiration of a member's term or within 45 days following the death, removal, or resignation prior to the completion of such member's term of office, the appointing body shall select a competent, qualified person to serve on the authority board of directors, who may be the individual whose term is expiring, provided the appointee is at least 21 years old, has been a resident of Douglas County for at least one year, is not an elected official, and is not an employee of the City of Douglasville, Douglas County, or the authority. If the appointing body fails to make a selection within the appropriate time period, the senior judge of the Superior Court of Douglas County shall provide his or her own selection within an additional 45 day period. Appointees to the authority shall represent the county at large, shall be appointed without regard to school districts, and shall be selected on the basis of competence and fair representation of the varied interests of the entire county. Normal terms for all appointed members of the authority board of directors shall commence on April 3 following appointment and terminate on April 2 of the year in which the term of office expires. If at the end of any term of office of any member a successor thereto shall not have been elected, then the member whose term of office shall have expired shall continue to hold office and be a full voting member until his or her successor shall be so elected.

(c) Immediately after the passage of this Act and the appointment of the members by the governing bodies of the City of Douglasville and Douglas County, the members of the authority shall enter upon their duties, and, as soon as is practicable thereafter, they shall hold an organizational meeting. The members of the authority shall elect one of their number as chairperson and another as vice chairperson. Neither the mayor of the City of

Douglasville nor the chairperson of the Douglas County Board of Commissioners shall serve as chairperson or vice chairperson of the authority. The members shall also elect a secretary and a treasurer, or a secretary-treasurer, who need not be members of the authority. An assistant secretary may also be elected at the discretion of the authority. Four members of the authority shall constitute a quorum. No vacancy on the authority shall impair the authority of the quorum to exercise the rights and powers of and perform all of the duties and obligations of the authority. The members of the authority shall receive the same expense allowance per day as that received by members of the General Assembly for each meeting of the authority actually attended as compensation for their services and shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The authority may make rules and regulations and adopt bylaws for its own government. The authority shall have perpetual existence.

(d) Any appointed member of the board of directors of the authority who qualifies as a candidate for public office shall resign from the board at the time of his or her qualification. No member of the authority board of directors appointed to fill full or partial terms following the effective date of this subsection shall serve more than two consecutive terms, except the individuals elected as mayor of the City of Douglasville and chairperson of the Douglas County Board of Commissioners.

(e) The members of the authority shall not be eligible to participate in any employee benefit plan, including, but not limited to, any insurance or retirement plan, which is sponsored in whole or in part by any county, city, or authority and which provides benefits to such members based upon their membership on the board of directors."

SECTION 2.

Said Act is further amended by revising Section 4 as follows:

"SECTION 4.

Definitions.

As used in this Act, the term:

(1) 'Authority' means the Douglasville-Douglas County Water and Sewer Authority created by Section 3 of this Act.

(2) 'Cost of the project' means and embraces the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment, financing charges, interest prior to, during, and for one year after completion of construction; the cost of engineering, architectural, fiscal and legal expenses, and of plans, specifications, and other expenses necessary or incident to determining the

feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this Act, the cost of placing the project in operation, and the condemnation of property necessary for construction and operation. The cost of any project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority with respect to the financing and operating of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under the provisions of this Act for such project.

(3) 'Dog River Drainage Basin' means all that tract or parcel of land lying and being in the unincorporated area of Douglas County, Georgia, the boundaries of which are generally described as follows:

BEGINNING at the point of intersection of the centerline of U. S. Highway 78 and the common boundary of Douglas County and Carroll County; proceeding thence in an easterly direction along the centerline of U. S. Highway 78 to its intersection with the centerline of Bright Star Road; proceeding thence in a southerly direction along the centerline of Bright Star Road to its intersection with the centerline of Central Church Road; proceeding thence in a southeasterly direction along the centerline of Central Church Road to its intersection with the centerline of Georgia Highway 5; proceeding thence in a southerly direction along the centerline of Georgia Highway 5 to its intersection with the centerline of Big A Road; proceeding thence in a southerly direction along the centerline of Big A Road to its intersection with the centerline of Georgia Highway 166; proceeding thence in an easterly direction along the centerline of Georgia Highway 166 to its intersection with the centerline of South River Road; proceeding thence in a southerly direction along the centerline of South River Road to its intersection with the northern land lot line of Land Lot 7 of the 3rd District and 5th Section of Douglas County, Georgia; proceeding thence west along said northern boundary of Land Lot 7 to the point which marks the common corner of Land Lots 7, 8, 13, and 14 of the 3rd District and 5th Section; proceeding thence south along the common boundary of Land Lots 7 and 14 to the point which marks the common corner of Land Lots 6, 7, 14, and 15 of the 3rd District and 5th Section; proceeding thence south along the common boundary of Land Lots 6 and 15 to its intersection with the centerline of the Chattahoochee River; proceeding thence in a southwesterly direction along the centerline of the Chattahoochee River to its intersection with the western

boundary of Land Lot 17 of the 3rd District and 5th Section; proceeding thence north along the common boundary of Land Lot 17 and 30 to the point which marks the common corner of Land Lots 17, 18, 29, and 30 of the 3rd District and 5th Section; proceeding thence north along the common boundary of Land Lots 18 and 29 to its intersection with the centerline of Five Notch Road; proceeding thence in a northwesterly direction along the centerline of Five Notch Road to its intersection with the centerline of Georgia Highway 166; proceeding thence in a westerly direction along the centerline of Georgia Highway 166 to its intersection with the common boundary of Douglas County and Carroll County; and proceeding generally in a northerly direction along said Douglas County/Carroll County line to its intersection with the centerline of U. S. Highway 78 and the POINT OF BEGINNING.

(4) 'Project' means and includes the planning, design, acquisition, construction, and management of systems, plants, reservoirs, works, instrumentalities, and property and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, dams, reservoirs, pumping stations, treatment facilities, generating stations, detention and retention facilities, water mains, sanitary sewers, storm sewers, and drainage structures: (A) used or useful in connection with a water supply and distribution system; (B) used or useful in connection with a sanitary sewerage system; (C) used or useful in connection with a comprehensive storm-water management system; and (D) used or useful in connection with a water quality or water conservation program.

(5) 'Revenue bonds' and 'bonds' means revenue bonds authorized to be issued pursuant to this Act. Revenue bonds may be issued by the authority as authorized in this Act without any other actions or proceedings. Nothing in this Act shall prohibit the authority from issuing other debt instruments permitted by law.

(6) 'Self-liquidating' means a project where, in the sole judgement of the authority, the revenues and earnings to be derived by the authority therefrom, including, but not limited to, any contractual payments, and all properties used, leased, and sold in connection therewith, together with any grants, will be sufficient to pay the cost of operating, maintaining, repairing, improving, and extending the project and to pay the principal and interest of the revenue bonds which may be issued for the cost of such project or projects."

SECTION 3.

Said Act is further amended by revising Section 5 as follows:

"SECTION 5.

Powers.

The authority shall have the power:

- (1) To have a seal and alter the same at its pleasure;
- (2) To acquire by purchase, lease, gift, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with the provisions of any and all existing laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of or dispose of the same in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this Act except from the funds provided under the authority of this Act, and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceedings as may be just to the authority and to the owners of the property to be condemned, provided that no property shall be acquired under the provisions of this Act upon which any lien or other encumbrance exists, unless at the time such property is so acquired a sufficient sum of money shall be deposited in trust to pay and redeem the fair value of such lien or encumbrance;
- (4) To enter into an agreement with the City of Douglasville, with Douglas County, or with any other political subdivision or municipal corporation of the state with respect to:
 - (A) Acquiring a source of water supply;
 - (B) Providing waste-water service;
 - (C) Providing storm-water management services;
 - (D) Preparing engineering data, plans, and specifications for a water, waste-water, or storm-water system or a combination of any such systems;
 - (E) Extending water mains;
 - (F) Apportioning the cost of constructing, extending, and maintaining a water, waste-water, or storm-water system or a combination of any such systems;
 - (G) Providing for the testing and inspection of facilities constructed;
 - (H) Providing for rates to be charged for water, waste-water, and storm-water services furnished to users and those benefitting from said system;
 - (I) Providing for the reading of meters and keeping of pertinent records; and

(J) Apportioning or designating the responsibility for any functions normally maintained by a water, waste-water, or storm-water system or a combination of any such systems at the most reasonable cost possible;

(5) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix their respective compensations;

(6) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts, with respect to the use of projects which it causes to be erected or acquired, and any and all persons, firms, and corporations and any and all political subdivisions, departments, institutions, or agencies of the state and all special districts and all municipal corporations located in Douglas County shall be authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to municipal corporations, special districts, and counties and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of water, waste-water, and storm-water services and facilities, or any of them, by the authority to such municipal corporations, special districts, and counties for a term not exceeding 50 years. As to any political subdivision, department, institution, or agency of this state and all special districts and municipal corporations located in Douglas County which shall enter into an agreement under the authority granted herein or in paragraph (4) of this section, the obligation to perform and fulfill such agreement shall constitute a general obligation of such entity for which its full faith and credit shall be and hereby is pledged;

(7) In addition to and without limiting the generality of paragraph (6) of this section, the authority shall have the right to enter into contracts, agreements, leases, or other instruments necessary or convenient with any political subdivision, department, institution, or agency of this state and all special districts and municipal corporations located in Douglas County for the purpose of enabling the authority to perform any functions pertaining to the protection of the water, waste-water, and storm-water systems in Douglas County, Georgia, that may have been exercised by any such political subdivision, department, institution, or agency of this state and all special districts and municipal corporations located in Douglas County, including, but not limited to, the right to regulate, monitor, inspect, and repair water, and waste-water or storm-water systems and related appurtenances and facilities, pump stations, on-site sanitary sewerage facilities, septic tanks, grease traps, pretreatment facilities, retention and detention facilities, and any and all other related equipment, facilities, and systems;

(8) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority or other debt instrument, revenues of the system, user fees, and any grant or payment from the United States of America or any agency or instrumentality thereof or from the State of Georgia or any agency, instrumentality, or political subdivision thereof;

(9) To make loans with, and accept grants or loans of money, or materials or property of any kind from, the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(10) To make loans with, and accept grants or loans of money, or materials or property of any kind from, the State of Georgia or any agency, instrumentality, or political subdivision thereof, upon such terms and conditions as the State of Georgia or such agency, instrumentality, or political subdivision may impose;

(11) To borrow money for any of its corporate purposes, to issue negotiable revenue bonds payable solely from funds pledged for that purpose, to issue other debt provided by law, and to provide for the payment of the same and for the rights of the holders thereof;

(12) To exercise any power usually possessed by private corporations performing similar functions, including the power to make short-term loans and to approve, execute, and deliver appropriate evidence of any such indebtedness, provided that no such power is in conflict with the Constitution or general laws of this state;

(13) To inspect all on-site sewage disposal systems which have been installed on property for which the authority provides water service in the Dog River Drainage Basin for the purpose of ensuring the proper operation of such systems; to have the right of entry to go onto such property for the purposes of inspecting on-site sewage disposal systems and repairing such systems under the authority granted by this subsection; to recommend repairs to such systems which are necessary, in the opinion of the authority, to make such systems operate properly; to perform such repairs as the authority considers necessary to make such systems operate properly in the event that the property owner fails or refuses to perform the repairs recommended by the authority; to discontinue water service if determined, in the sole discretion of the authority, appropriate; to assess the cost of any repairs performed by the authority or its agents against the owner of the property on which such repairs were performed and to impose a lien for the costs of such repairs upon the real estate records of the Clerk of the Superior Court of Douglas County or to proceed with any other action to collect such sums; and to take any action in any court to enforce the provisions of this subsection;

- (14) To implement programs and regulations to protect water quality;
- (15) To implement programs and regulations for water conservation purposes;
- (16) To create, establish, acquire, operate, and control separate and distinct subsidiaries or affiliated entities, whether for profit or nonprofit, which shall maintain their own financial structures, rules and regulations, and assets and liabilities and which the authority determines to be consistent with and in furtherance of the purposes set forth in this Act and in the best interest of the authority; and
- (17) To do all things necessary or convenient to carry out the powers expressly given in this Act."

SECTION 4.

Said Act is further amended by revising Section 5A as follows:

"SECTION 5A.

Determinations of drainage.

The authority shall have the power to determine whether a parcel of real property is located within or outside the boundaries of the Dog River Drainage Basin and to determine whether the drainage from such parcel of real property flows within or outside the Dog River Drainage Basin. Such determinations shall be made upon the certification of a licensed Georgia professional engineer or hydrologist. If a parcel of real property which is determined to be located either within or outside the Dog River Drainage Basin drains into such basin, the authority shall be authorized to exercise those powers provided under paragraph (13) of Section 5 of this Act with respect to such parcel."

SECTION 5.

Said Act is further amended by revising Section 6 as follows:

"SECTION 6.

Financing projects.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created hereby, shall have power and is hereby authorized at one time, or from time to time, to borrow money for the purpose of paying all or any part of the cost of the project or any one or more projects and to provide by resolution for issuance of negotiable revenue bonds for that purpose. The principal and interest of such revenue bonds shall be payable solely from the special fund

herein provided for such payment. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from their date or dates, shall be payable in such a medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. The interest rate or rates to be borne by any bonds and the time of payment of such interest shall be fixed, and with respect to any interest rate which floats in response to a variable, the method of calculation shall be fixed by the authority in the resolution providing for the issuance of the bonds. Any bonds issued by the authority shall be exempt from all laws of the State of Georgia governing usury or prescribing or limiting interest rates to be borne by bonds or other obligations. Nothing in this Act shall limit the ability of the authority to issue other debt instruments provided by law."

SECTION 6.

Said Act is further amended by revising Section 14 as follows:

"SECTION 14.

Same; conditions precedent to issuance; object of issuance.

Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this Act. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of any particular project. Any resolution providing for the issuance of revenue bonds under the provisions of this Act shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular, special, or called meeting of the authority by a majority of the quorum as provided in this Act."

SECTION 7.

Said Act is further amended by revising Section 24 as follows:

"SECTION 24.

Moneys received considered trust funds.

All moneys received by the authority pursuant to this Act, whether as proceeds from the sale of revenue bonds, as proceeds of short term loans, as grants or other contributions, or

337 as revenues, fees, and earnings, shall be deemed to be trust funds to be held and applied
338 solely as provided in this Act."

339 **SECTION 8.**

340 Said Act is further amended by revising Section 25 as follows:

341 "SECTION 25.

342 Purpose of the authority.

343 Without limiting the generality of any provisions of this Act, the general purpose of the
344 authority is declared to be that of acquiring, equipping, constructing, maintaining, and
345 operating adequate water supply treatment and distribution facilities, waste-water
346 collection and treatment facilities, and storm-water management facilities and making such
347 facilities and the services thereof available to public and private consumers, users, and
348 beneficiaries located in the City of Douglasville, Douglas County, and their environs,
349 including municipalities within and without the said county and to adjoining counties;
350 extending and improving such facilities; and doing all things deemed by the authority
351 necessary, convenient, and desirable for and incident to the efficient and proper
352 development and operation for such type of undertakings."

353 **SECTION 9.**

354 Said Act is further amended by revising Section 26 as follows:

355 "SECTION 26.

356 Rates, charges and revenues; use.

357 The authority is hereby authorized to prescribe and fix and collect rates, fees, tolls, or
358 charges, and to revise from time to time and collect such rates, fees, tolls, or charges for
359 the services, facilities, or commodities furnished, and in anticipation of the collection of
360 the revenues of such undertaking or project, to issue revenue bonds as herein provided to
361 finance in whole or in part the cost of the acquisition, construction, reconstruction,
362 improvement, betterment, or extension of the water, waste-water, and storm-water systems,
363 and to pledge to the punctual payment of said bonds and interest thereon all or any part of
364 the revenues of such undertaking or project, including the revenues of improvements,
365 betterments, or extensions thereto thereafter made."

366 **SECTION 10.**

367 Said Act is further amended by revising Section 26A as follows:

368 "SECTION 26A.

369 The authority shall have the right to impose liens upon the real property of customers of
370 the authority who receive service from the authority, either for water, waste-water, or
371 storm-water services, and the aforesaid liens may be recorded upon the general execution
372 docket maintained by the Clerk of the Superior Court of Douglas County, Georgia. The
373 authority shall have all rights of recovery and collection against the property owner and the
374 actual customer utilizing the services or receiving the benefits of the authority as shall be
375 provided by law."

376 **SECTION 11.**

377 Said Act is further amended by adding a new Section 30A to read as follows:

378 "SECTION 30A.

379 Immunity from tort actions.

380 The authority shall have the same immunity and exemption from liability for torts and
381 negligence as the State of Georgia, and the officers, agents, and employees of the authority,
382 when in performance of work of the authority, shall have the same immunity and
383 exemption from liability for torts and negligence as officers, agents, and employees of the
384 State of Georgia. The authority may be sued the same as private corporations on any
385 contractual obligation of the authority."

386 **SECTION 12.**

387 All laws and parts of laws in conflict with this Act are repealed.